3

CF 1201

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.2867 OF 2005

PETITIONER: Smt. Rukmani Patel, W/o Subhash Patel, Aged about years, R/o Village: Bichchiya, Block & Tehsil: Basna, District: Mahasamund (C.G.).

- Versus -

RESPONDENTS:

1. Sub Divisional Officer(Revenue) Saraipali, District: Mahasamund Chhattisgarh.
2. Presiding Officer, R.E.O., for Election of Up-Sarpanch, Gram Panchayat: Bichchiya, Block: Basna, Dist: Mahasamund Chhattisgarh,
3. Sonsingh Sidar, S/o Sukhiram Sidar, Aged about 30 years, R/o Bichchiya, Block & Tehsil : Basna, District: Mahasamund, Chhattisgarh.

P.R. No. 3018/25
Presented by Shri H.S. Gahri
dated 2/7/25

बिलासपुर तहसील क्षेत्र

WRIT PETITION UNDER ARTICLES 226 / 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

29

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 2867/ सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	20-7-2005 Mr. B.D. Guru, counsel for the petitioner. Mr. Sunil Otwani, Panel lawyer for the State. By this writ petition under Article 226/227 of the Constitution of India, the petitioner, who is an elected Up-Sarpanch of Village: Bichchiya, Block & Tehsil: Basna, District: Mahasamund, has questioned the legality and correctness of order dated 20-6-2005 (Annexure P-1) passed by the Sub Divisional Officer, (Revenue), Saraipali, in Panchayat Election Petition No.81B/12 year 2004-05. Brief facts leading to filing of this petition, as set out in the writ petition, necessary for the disposal are that the petitioner was elected Up-Sarpanch for Gram Panchayat: Bichchiya, and the same was notified on 4-2-2005. The petitioner and respondent No.3 submitted their nomination papers before the Presiding Officer to contest the election of Up-Sarpanch, Gram Panchayat: Bichchiya and the said seat of Up-Sarpanch was unreserved. On the date of scrutiny, two nomination papers that were submitted by the petitioner & respondent No.3 were put to scrutiny, and the Presiding Officer found that the nomination paper filed by respondent No.3 is incomplete, as in clause 2 of the nomination paper of respondent No.3, he had not marked against the Scheduled Tribe category. Accordingly, the nomination of respondent No.3 was rejected being incomplete in the absence of marking against Scheduled Tribe. The petitioner was elected unopposed as Up-Sarpanch, therefore, respondent	

30

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

No.3 being aggrieved by the said order preferred an election petition under Section 122 (1) of the Panchayat Raj Adhiniyam, 1993, and the S.D.O. (Revenue) vide the impugned order allowed the petition and quashed the order of the Presiding Officer rejecting the nomination paper of respondent No.3.

I have heard Mr. B.D. Guru, learned counsel for the petitioner and Mr. Sunil Otwani, learned Panel Lawyer for the State on admission of this petition.

From perusal of the impugned order it reveals that when the nomination paper filed by the respondent No.3 was put to scrutiny, the same was lacking i.e. full name of respondent No.3 with caste was not mentioned in the nomination paper. In form No.2 on the declaration portion, respondent No.3 has not mentioned as to whether he belongs to Scheduled Caste, Scheduled Tribe or Other Backward Class, and on this ground the nomination paper was rejected. Perusal of the impugned order further shows that the primary condition for entitlement of contesting the election of Up-Sarpanch was that one should be an elected Panch of the Gram Panchayat, and respondent No.3 as well as the petitioner were elected Panch, therefore, they were entitled to contest the election of Up-Sarpanch. In the nomination paper, respondent No.3 did not tick mark his sub-caste as to whether he belongs to Scheduled Caste, Scheduled Tribe or Other Backward Class. Learned Sub Divisional Officer has held that on this ground, the nomination paper could not have been rejected, because the

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

post of Up-Sarpanch was for the general category, it was not reserved for SC, ST or OBC. Therefore, by not tick marking against the said column the nomination paper could not have been rejected. Finding of learned S.D.O. is legal and correct, and there is no infirmity in the finding for the reason that when the post of Up-Sarpanch was not reserved for any SC, ST or OBC, then there was no necessity to tick mark the caste, as the same was prescribed in the proforma for those candidates who are contesting the election on reserved post for a particular caste.

The other ground which was taken for rejection of the nomination paper of respondent No.3 was that in the nomination paper he mentioned only Son Singh and he did not mention his surname as Son Singh Sidar which was entered in the electoral roll. In this respect, learned S.D.O. observed that in the nomination paper, respondent No.3 mentioned his name, his fathers name and other relevant information, therefore, it cannot be said that the identity of respondent No.3 could not have been ascertained. Merely by not mentioning 'Sidar', the nomination paper could not have been rejected. The nomination paper can only be rejected when identity of a candidate cannot be ascertained from the electoral roll on account of the name mentioned in the nomination paper and also on the basis of the particulars filled by the candidate in the nomination paper. The S.D.O. has categorically held that the name of respondent No.3 was correctly mentioned and other particulars were also filled-in properly, and only the caste was not mentioned along with his name. When on account of the

32

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

information filled-in in the nomination paper the identity of respondent No.3 was ascertainable, then by merely not mentioning the caste along with his name cannot be held to be a substantial defect in the nomination paper.

At the time of rejection of nomination paper of respondent No.3, the Returning Officer has not written that the name of respondent No.3 was not tallying with the electoral roll or his father's name was not correct, and on account of that it was not possible to ascertain the identity of respondent No.3.

Apart from the above, learned counsel for the petitioner could not point out as to how the nomination paper was rejected in accordance with law.

In the result, I do not find any substance in this writ petition, the same is liable to be dismissed and it is hereby dismissed, at the admission stage itself.

Consequently, M.(W.)P.No.2396/2005 and I.A.No.5669/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Soma

(पीछे देखिये)